

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CITY PRINTS, LLC
Plaintiff,

v.

LOT LESS NYC, INC.,
Defendant.

Case No. 2:17-cv-02788-PSG-GJS

*Assigned for all discovery matters to
the Honorable Gail J. Standish*

PROTECTIVE ORDER BASED ON
STIPULATION OF THE PARTIES

**[SEE CHANGES MADE IN
BOLD]**

1. A. GOOD CAUSE STATEMENT

The Parties to this action have stipulated that discovery in this action is likely to involve confidential or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. They have stated that it is their intent that information will not be designated as confidential for tactical reasons in this case and that nothing shall be designated without a good faith belief that there is good cause why it should not be part of the public record of this case. Examples of confidential information that the parties may seek to protect from unrestricted or unprotected disclosure include, but are not limited to:

- (a) Information that is the subject of a non-disclosure or confidentiality agreement or obligation;
- (b) The names, or other information tending to reveal the identity of a party's supplier, designer, distributor, or customer;
- (c) Agreements with third-parties, including license agreements, distributor agreements, manufacturing agreements, design agreements, development agreements, supply agreements, sales agreements, or service agreements;
- (d) Research and development information;
- (e) Proprietary engineering or technical information, including product design, manufacturing techniques, processing information, drawings, memoranda and reports;
- (f) Information related to budgets, sales, profits, costs, margins, licensing of technology or designs, product pricing, or other internal financial/accounting information, including non-public information related to financial condition or performance and income or other non-public tax information;

- 1 (g) Information related to internal operations including personnel
2 information;
- 3 (h) Information related to past, current and future product
4 development;
- 5 (i) Information related to past, current and future market analyses
6 and business and marketing development, including plans,
7 strategies, forecasts and competition; and
- 8 (j) Trade secrets (as defined by the jurisdiction in which the
9 information is located).

10 The Parties believe that unrestricted or unprotected disclosure of such
11 confidential technical, commercial, financial, or personal information would result
12 in prejudice or harm to the producing party by revealing the producing party's
13 competitive confidential information, which has been developed at the expense of
14 the producing party and which represents valuable tangible and intangible assets of
15 that party. Additionally, privacy interests may also be implicated.

16 The parties agreed, subject to the Court's approval, that the following terms
17 and conditions shall apply to this civil Action. Where the Court has modified,
18 added, or rejected a term proposed by the parties, that term appears below in bold.

19 TERMS

20 The parties acknowledge that this Stipulated Protective Order does not
21 confer blanket protections on all disclosures or responses to discovery and that the
22 protection it affords from public disclosure and use extends only to the limited
23 information or items that are entitled to confidential treatment under the applicable
24 legal principles. Nothing herein shall prevent any Party from withholding or
25 redacting any documents and/or information that the Party deems privileged,
26 irrelevant, or otherwise objectionable.

27

28

1 B. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
2 SEAL

3 The parties further acknowledge, as set forth in Section 12.3, below, that this
4 Stipulated Protective Order does not entitle them to file confidential information
5 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
6 and the standards that will be applied when a party seeks permission from the court
7 to file material under seal.

8 There is a strong presumption that the public has a right of access to judicial
9 proceedings and records in civil cases. In connection with non-dispositive
10 motions, good cause must be shown to support a filing under seal. See Kamakana
11 v. City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v.
12 Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v.
13 Sony Electronics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
14 protective orders require good cause showing), and a specific showing of good
15 cause or compelling reasons with proper evidentiary support and legal justification,
16 must be made with respect to Protected Material that a party seeks to file under
17 seal. The parties' mere designation of Disclosure or Discovery Material as
18 CONFIDENTIAL does not—without the submission of competent evidence by
19 declaration, establishing that the material sought to be filed under seal qualifies as
20 confidential, privileged, or otherwise protectable—constitute good cause.

21 Further, if a party requests sealing related to a dispositive motion or trial,
22 then compelling reasons, not only good cause, for the sealing must be shown, and
23 the relief sought shall be narrowly tailored to serve the specific interest to be
24 protected. See Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-79 (9th Cir.
25 2010). For each item or type of information, document, or thing sought to be filed
26 or introduced under seal in connection with a dispositive motion or trial, the party
27 seeking protection must articulate compelling reasons, supported by specific facts
28 and legal justification, for the requested sealing order. Again, competent evidence

1 supporting the application to file documents under seal must be provided by
2 declaration.

3 Any document that is not confidential, privileged, or otherwise protectable in
4 its entirety will not be filed under seal if the confidential portions can be redacted.
5 If documents can be redacted, then a redacted version for public viewing, omitting
6 only the confidential, privileged, or otherwise protectable portions of the
7 document, shall be filed. Any application that seeks to file documents under seal in
8 their entirety should include an explanation of why redaction is not feasible.

9 **2. DEFINITIONS**

10 2.1 Action: this pending federal lawsuit captioned, case number 2:17-cv-
11 02789

12 2.2 Challenging Party: a Party or Non-Party that challenges the
13 designation of information or items under this Order.

14 2.3 “CONFIDENTIAL” Information or Items: Subject to the limitations
15 set forth in this Stipulated Protective Order, Designated Material may be marked
16 “CONFIDENTIAL” for the purpose of preventing the disclosure of information or
17 materials that the designating party in good faith believes is confidential. Before
18 designating any specific information or material “CONFIDENTIAL,” the
19 Designating Party’s Counsel shall make a good faith determination that the
20 information warrants protection under Rule 26(c) of the Federal Rules of Civil
21 Procedure. Such information may include, but is not limited to:

22 (a) Technical data, research and development data, and any other
23 confidential commercial information, including but not limited to trade secrets of
24 the Designating Party;

25 (b) Information which the Designating Party believes in good faith
26 falls within the right to privacy guaranteed by the laws of the United States or
27 California;

28

1 (c) Information which the Designating Party believes in good faith
2 to constitute, contain, reveal or reflect proprietary, financial, business, technical, or
3 other confidential information which is not otherwise protected as “Highly
4 Confidential – Attorneys’ Eyes Only”.

5 (d) The fact that an item or category is listed as an example in this
6 or other sections of this Stipulated Protective Order does not, by itself, render the
7 item or category discoverable.

8 2.4 Consultant: A person, including non-party expert and/or consultant,
9 retained or employed by Counsel to assist in the preparation of the case, to the
10 extent that they are reasonably necessary to render professional services in this
11 Action, and subject to the disclosure requirements within this Stipulated Protective
12 Order.

13 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
14 their support staff).

15 2.6 Designating Party: a Party or Non-Party that designates information
16 or items that it produces in disclosures or in responses to discovery as
17 “CONFIDENTIAL.”

18 2.7 Disclosure or Discovery Material: all items or information, regardless
19 of the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced
21 or generated in disclosures or responses to discovery in this matter.
22

23 2.8 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as
25 an expert witness or as a consultant in this Action.
26

27 2.9 House Counsel: attorneys who are employees of a party to this Action
28 including their associates, clerks, legal assistants, stenographic, videographic and

1 support personnel. House Counsel does not include Outside Counsel of Record or
2 any other outside counsel.

3 2.10 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”:

4 Subject to the limitations in this Stipulated Protective Order, Designated Materials
5 may be marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” for
6 the purpose of preventing the disclosure of information or materials which, if
7 disclosed to the receiving party, might cause competitive harm to the Designating
8 Party. Information and material that may be subject to this protection includes, but
9 is not limited to, technical and/or research and development data, intellectual
10 property, financial, marketing and other sales data, and/or information having
11 strategic commercial value pertaining to the Designating Party’s trade or business.
12 Nothing in Section 2.3 shall limit the information or material that can be designated
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under this Section.
14 Before designating any specific information “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY,” the Designating Party’s Counsel shall make a good
16 faith determination that the information warrants such protection. Such information
17 may include, but is not limited to:

18 (a) The financial performance or results of the Designating Party,
19 including without limitation income statements, profit and loss statements, balance
20 sheets, cash flow analyses, budget projections, purchase and sale records and
21 present value calculations;

22 (b) Corporate and strategic planning by the Designating Party,
23 including without limitation marketing plans, competitive intelligence reports, sales
24 projections and competitive strategy documents;

25 (c) Names, addresses, and other information that would identify
26 customers or prospective customers, or the distributors or prospective distributors
27 of the Designating Party; and
28

1 (d) Information used by the Designating Party in or pertaining to its
2 trade or business, which information the Designating Party believes in good faith
3 has competitive value, which is not generally known to others and which the
4 Designating Party would not normally reveal to third parties except in confidence,
5 or has undertaken with others to maintain in confidence;

6 2.11 Non-Party: any natural person, partnership, corporation, association
7 or other legal entity not named as a Party to this action.

8 2.12 Outside Counsel of Record: attorneys who are not employees of a
9 party to this Action but are retained to represent or advise a party to this Action and
10 have appeared in this Action on behalf of that party or are affiliated with a law firm
11 that has appeared on behalf of that party, and includes support staff.

12 2.13 Party: any party to this Action, including all of its officers, directors,
13 employees, consultants, retained experts, and Outside Counsel of Record (and their
14 support staffs).

15 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this Action.

17 2.15 Professional Vendors: persons or entities that provide litigation
18 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
19 demonstrations, and organizing, storing, or retrieving data in any form or medium)
20 and their employees and subcontractors.

21 2.16 Protected Material: any Disclosure or Discovery Material that is
22 designated as "CONFIDENTIAL."

23 2.17 Receiving Party: a Party that receives Disclosure or Discovery
24 Material from a Producing Party.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only
27 Protected Material (as defined above), but also (1) any information copied or
28 extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the
4 trial judge. This Order does not govern the use of Protected Material at trial.

5 **4. DURATION**

6 The parties agree that even after final disposition of this litigation, they
7 remain contractually bound to the confidentiality obligations set forth in this
8 Order until a Designating Party agrees otherwise in writing or a court order
9 otherwise directs. However, once a case proceeds to trial, information that
10 was designated as CONFIDENTIAL or maintained pursuant to this protective
11 order used or introduced as an exhibit at trial becomes public and will be
12 presumptively available to all members of the public, including the press,
13 unless compelling reasons supported by specific factual findings to proceed
14 otherwise are made to the trial judge in advance of the trial. *See Kamakana,*
15 *447 F.3d at 1180-81* (distinguishing “good cause” showing for sealing
16 documents produced in discovery from “compelling reasons” standard when
17 merits-related documents are part of court record). Accordingly, the terms of
18 this protective order do not extend beyond the commencement of the trial.

19 Final disposition shall be deemed to be the later of (1) dismissal of all
20 claims and defenses in this Action, with or without prejudice; and (2) final
21 judgment herein after the completion and exhaustion of all appeals,
22 rehearings, remands, trials, or reviews of this Action, including the time limits
23 for filing any motions or applications for extension of time pursuant to
24 applicable law.

25 The use of Designated Materials at depositions does not void the
26 documents’ status as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY” material or void the restrictions on the use of
28 the Designated Materials. Upon request of a party, the parties shall meet and

1 confer concerning the use and protection of Designated Material in open court
2 at any hearing.

3 At deposition, the party using Designated Material must request that the
4 portion of the proceeding where use is made be conducted so as to exclude
5 persons not qualified to receive such Designated Material.

6 Prior to the pretrial conference, the parties shall meet and confer
7 concerning appropriate methods for dealing with Designated Material at trial.
8 Any such methods must be brought to the attention of the trial judge for
9 approval.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Designated Material. Information or material may be designated for
12 confidential treatment pursuant to this Stipulated Protective Order by the
13 Designating Party, if: (a) produced or served, formally or informally, pursuant to
14 the Federal Rules of Civil Procedure or in response to any other formal or informal
15 discovery request in this Action; and/or (b) filed or lodged with the Court.

16
17 Each Party or Non-Party that designates information or items for protection
18 under this Order must take care to limit any such designation to specific material
19 that qualifies under the appropriate standards. The Designating Party must
20 designate for protection only those parts of material, documents, items or oral or
21 written communications that qualify so that other portions of the material,
22 documents, items or communications for which protection is not warranted are not
23 swept unjustifiably within the ambit of this Order.

24 Mass, indiscriminate or routinized designations are prohibited.
25 Designations that are shown to be clearly unjustified or that have been made
26 for an improper purpose (e.g., to unnecessarily encumber the case
27
28

1 **development process or to impose unnecessary expenses and burdens on other**
2 **parties) may expose the Designating Party to sanctions.**

3 If it comes to a Designating Party's attention that information or items that it
4 designated for protection do not qualify for protection, that Designating Party must
5 promptly notify all other Parties that it is withdrawing the inapplicable designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in
7 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
9 under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), that the Producing Party affix at a minimum, the legend
15 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
16 ONLY". If the first or cover page of a multi-page document bears the legend
17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
18 ONLY" the entire document shall be deemed so designated, and the absence of
19 marking each page shall not constitute a waiver of the terms of this Stipulated
20 Protective Order. If the label affixed to a computer disk containing multiple files
21 bears the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
22 ATTORNEYS' EYES ONLY" the entire disk shall be deemed so protected, and
23 the absence of marking of each file shall not constitute a waiver of the terms of this
24 Stipulated Protective Order. If only a portion of the material on a page qualifies for
25 protection, the Producing Party also must clearly identify the protected portion(s)
26 (e.g., by making appropriate markings in the margins).

27 (b) A Party or Non-Party that makes original documents available
28 for inspection need not designate them for protection until after the inspecting

1 Party has indicated which documents it would like copied and produced. During
2 the inspection and before the designation, all of the material made available for
3 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
4 identified the documents it wants copied and produced, the Producing Party must
5 determine which documents, or portions thereof, qualify for protection under this
6 Order. Then, before producing the specified documents, the Producing Party must
7 affix the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –ATTORNEYS’
8 EYES ONLY” to each page that contains Protected Material. If only a portion of
9 the material on a page qualifies for protection, the Producing Party also must
10 clearly identify the protected portion(s) (e.g., by making appropriate markings in
11 the margins).

12 (c) Deposition transcripts and portions thereof taken in this Action
13 may be designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY” during the deposition or after, in which case the
15 portion of the transcript containing Designated Material shall be identified in the
16 transcript by the Court Reporter as “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” The designated testimony
18 shall be bound in a separate volume and marked by the reporter accordingly.

19 Where testimony is designated during the deposition, the Designating Party
20 shall have the right to exclude, at those portions of the deposition, all persons not
21 authorized by the terms of this Stipulated Protective Order to receive such
22 Designated Material.

23 Within sixty (60) days after a deposition transcript is certified by the court
24 reporter, any party may designate pages of the transcript and/or its exhibits as
25 Designated Material. During such sixty (60) day period, the transcript in its
26 entirety shall be treated as “CONFIDENTIAL” (except for those portions identified
27 earlier as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” which
28 shall be treated accordingly from the date of designation). If any party so

1 designates such material, the parties shall provide written notice of such
2 designation to all parties within the sixty (60) day period. Designated Material
3 within the deposition transcript or the exhibits thereto may be identified in writing
4 by page and line, or by underlining and marking such portions “CONFIDENTIAL”
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and providing such
6 marked-up portions to all Counsel.

7 (d) for information produced in some form other than documentary
8 and for any other tangible items, that the Producing Party affix in a prominent
9 place on the exterior of the container or containers in which the information is
10 stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-
11 ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information
12 warrants protection, the Producing Party, to the extent practicable, shall identify the
13 protected portion(s).

14 (e) Copies. All complete or partial copies of a document that
15 disclose Designated Materials shall be subject to the terms of this Stipulated
16 Protective Order.

17 5.3 When a party wishes to designate as “CONFIDENTIAL” or
18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” materials produced
19 by someone other than the Designating Party (a “Producing Party”), such
20 designation shall be made:

21 (a) Within forty-five (45) business days from the date that the
22 Designating Party receives copies of the materials from the producing or disclosing
23 entity; and

24 (b) By notice to all parties to this Action and to the Producing
25 Party, if such party is not a party to this Action, identifying the materials to be
26 designated with particularity (either by production numbers or by providing other
27 adequate identification of the specific material). Such notice shall be sent by
28 email.

1 5.4 A party shall be permitted to designate as “CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material produced
3 by a Producing Party only where:

4 (a) The material being produced was provided to or developed by
5 such Producing Party: (i) under a written confidentiality agreement with the
6 Designating Party; or (ii) within a relationship with the Designating Party (or a
7 party operating under the control thereof) in which confidentiality is imposed by
8 law (including, but not limited, to the employment relationship and the vendor-
9 customer relationship); or

10 (b) The material being produced could be considered
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY” material of the Designating Party under Section 2.3 or Section 2.10 of this
13 Stipulated Protective Order if it were in the possession of the Designating Party.

14 5.5 Upon notice of designation, all persons receiving notice of the
15 requested designation of materials shall:

16 (a) Make no further disclosure of such Designated Material or
17 information contained therein, except as allowed in this Stipulated Protective
18 Order;

19 (b) Take reasonable steps to notify any persons known to have
20 possession of or access to such Designated Materials of the effect of such
21 designation under this Stipulated Protective Order.

22 (c) If “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
23 ATTORNEYS’ EYES ONLY” material or information contained therein is
24 disclosed to any person other than those entitled to disclosure in the manner
25 authorized by this Stipulated Protective Order, the party responsible for the
26 disclosure shall, immediately upon learning of such disclosure, inform the
27 Designating Party in writing of all pertinent facts relating to such disclosure, and
28 shall make every effort to prevent further disclosure by the unauthorized person(s).

1 5.6 Inadvertent Failures to Designate. If any party required to produce
2 documents contends that it inadvertently produced any Designated Material
3 without marking it with the appropriate legend, or inadvertently produced any
4 Designated Material with an incorrect legend, the producing party may give written
5 notice to the receiving party or parties, including appropriately stamped substitute
6 copies of the Designated Material. If the parties collectively agree to replacement
7 of the Designated Material, then the documents will be so designated. Within five
8 (5) business days of receipt of the substitute copies, the receiving party shall return
9 the previously unmarked or mismarked items and all copies thereof. If the parties
10 do not collectively agree to replacement of the Designated Material, the producing
11 party shall comply with the procedure of Local Rule 37 in seeking protection for
12 the inadvertently produced material.

13 Unless and until otherwise ordered by the Court or agreed to in writing by
14 the parties, all Designated Materials designated under this Stipulated Protective
15 Order shall be used by the parties and persons receiving such Designated Materials
16 solely for conducting the above-captioned litigation and any appellate proceeding
17 relating thereto. Designated Material shall not be used by any party or person
18 receiving them for any business or any other purpose. No party or person shall
19 disclose Designated Material to any other party or person not entitled to receive
20 such Designated Material under the specific terms of this Stipulated Protective
21 Order. For purposes of this Stipulated Protective Order, “disclose” or “disclosed”
22 means to show, furnish, reveal or provide, indirectly or directly, any portion of the
23 Designated Material or its contents, orally or in writing, including the original or
24 any copy of the Designated Material.

25 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
27 designation of confidentiality at any time that is consistent with the Court’s
28 Scheduling Order. Unless a prompt challenge to a Designating Party’s

1 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
2 unnecessary economic burdens, or a significant disruption or delay of the litigation,
3 a Party does not waive its right to challenge a confidentiality designation by
4 electing not to mount a challenge promptly after the original designation is
5 disclosed.

6 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute
7 resolution process by providing written notice of each designation it is challenging
8 and describing the basis for each challenge. To avoid ambiguity as to whether a
9 challenge has been made, the written notice must recite that the challenge to
10 confidentiality is being made in accordance with this specific paragraph of the
11 Stipulated Protective Order. The parties shall attempt to resolve each challenge in
12 good faith and must begin the process by conferring directly (in voice to voice
13 dialogue; other forms of communication are not sufficient) within fourteen (14)
14 days of the date of service of notice. In conferring, the Challenging Party must
15 explain the basis for its belief that the confidentiality designation was not proper
16 and must give the Designating Party an opportunity to review the designated
17 material, to reconsider the circumstances, and, if no change in designation is
18 offered, to explain the basis for the chosen designation. A Challenging Party may
19 proceed to the next stage of the challenge process only if it has engaged in this
20 meet and confer process first or establishes that the Designating Party is unwilling
21 to participate in the meet and confer process in a timely manner.

22 **6.3 Judicial Intervention.** **If the Parties cannot resolve a challenge**
23 **without court intervention, the Challenging Party initiate the dispute**
24 **resolution procedures set forth in the Magistrate Judge’s Procedures, found**
25 **on the Court’s website before filing a motion. If motion practice is deemed**
26 **necessary, the Challenging Party shall file and serve a motion to challenge**
27 **confidentiality under Civil Local Rule 37-1 et seq. (and in compliance with**
28 **Civil Local Rule 79-5.1, if applicable) within twenty-one (21) days of the initial**

1 notice of challenge or as otherwise set by the Court. Each such motion must
2 be accompanied by a competent declaration affirming that the movant has
3 complied with the meet and confer requirements imposed in the preceding
4 paragraph. Failure by the Challenging Party to make such a motion including
5 the required declaration within twenty-one (21) days (or as otherwise set by
6 the Court, if applicable) shall automatically waive the ability to challenge the
7 confidentiality designation for each challenged designation. In addition, the
8 Designating Party may file a motion for a protective order preserving the
9 confidential designation at any time if there is good cause for doing so. Any
10 motion brought pursuant to this provision must be accompanied by a
11 competent declaration affirming that the movant has complied with the meet
12 and confer requirements imposed by the preceding paragraph.

13 6.4 The burden of persuasion in any such challenge proceeding shall be
14 on the Designating Party. Frivolous challenges, and those made for an improper
15 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
16 parties) may expose the Challenging Party to sanctions. Unless the Designating
17 Party has waived or withdrawn the confidentiality designation, all parties shall
18 continue to afford the material in question the level of protection to which it is
19 entitled under the Producing Party's designation until the Court rules on the
20 challenge.

21 7. ACCESS TO AND USE OF PROTECTED MATERIAL]

22
23 7.1 Basic Principles. A Receiving Party may use Protected Material that
24 is disclosed or produced by another Party or by a Non-Party in connection with this
25 Action only for prosecuting, defending or attempting to settle this Action. Such
26 Protected Material may be disclosed only to the categories of persons and under the
27 conditions described in this Order. When the Action has been terminated, a
28

1 Receiving Party must comply with the provisions of section 13 below (FINAL
2 DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons
5 authorized under this Order.

6 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated
9 "CONFIDENTIAL" only to:

10 (a) Any person who appears on the face of the Designated Material
11 marked "CONFIDENTIAL" as an author, addressee, or recipient thereof;

12 (b) Outside Counsel of Record to the parties in this Action, House
13 counsel, and their respective associates, clerks, legal assistants, stenographic,
14 videographic and support personnel, and other employees of such outside litigation
15 attorneys, and organizations retained by such attorneys to provide litigation support
16 services in this Action and the employees of said organizations;

17 (c) Experts, Consultants, including non-party experts and
18 consultants retained or employed by Counsel to assist in the preparation of the
19 case, to the extent they are reasonably necessary to render professional services in
20 this Action, and subject to the disclosure requirements of Section 7.1. Each Expert
21 or Consultant must sign a certification (see "Exhibit A") that he or she has read this
22 Stipulated Protective Order, will abide by its provisions, and will submit to the
23 jurisdiction of this Court regarding the enforcement of this Stipulated Protective
24 Order's provisions;

25 (d) A party's officers and/or employees, which may include House
26 Counsel;

27 (e) The Court, its clerks, and Court officials, employees,
28 secretaries, and any court reporter retained to record proceedings before the Court.

1 Designated Material may be disclosed to any special master, referee, expert,
2 technical advisor or Third-Party Consultant appointed by the Court, to the jury in
3 this Action, and any interpreters interpreting on behalf of any party or deponent.;
4 and

5 (f) Any mediator or settlement officer, and their supporting
6 personnel, mutually agreed upon by those parties engaged in settlement
7 discussions. Each mediator or settlement officer must sign a certification that he or
8 she has read this Stipulated Protective Order, will abide by its provisions, and will
9 submit to the jurisdiction of this Court regarding the enforcement of this Stipulated
10 Protective Order's provisions.

11 7.3 Disclosure of "HIGHLY CONFIDENTIAL- ATTORNEYS' EYES
12 ONLY" Information or Items. Materials designated "HIGHLY CONFIDENTIAL
13 – ATTORNEYS' EYES ONLY" may be disclosed only to the following
14 Designees:

15 (a) Any person who appears on the face of the Designated Material
16 marked "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" as an
17 author, addressee, or recipient thereof;

18 (b) Counsel to the parties in this Action, including any Outside
19 Counsel of Record and House Counsel, and their respective associates, clerks, legal
20 assistants, stenographic, videographic and support personnel, and other employees
21 of such outside litigation attorneys, and organizations retained by such attorneys to
22 provide litigation support services in this Action and the employees of said
23 organizations. Counsel herein explicitly include any House Counsel, whether or
24 not they are attorneys of record in this Action. Notwithstanding the foregoing or
25 anything to the contrary contained herein, any items designated under this Section
26 7.3 by a defendant in this Action shall not be disclosed to any co-defendants'
27 House Counsel, if the same are designated as "HIGHLY CONFIDENTIAL –
28 ATTORNEYS' EYES ONLY", without the express written consent of the

1 Designating Party that produced the documents. Notwithstanding the foregoing or
2 anything to the contrary contained herein, any items designated under this Section
3 7.3 in this Action shall not be disclosed by any House Counsel to any present or
4 former officers, directors, shareholders, partners, managers, members, employees,
5 agents, insurers, or representatives of the receiving party without the express
6 written consent of the Designating Party;

7 (c) Experts or Consultants for the parties to this Action, as defined
8 herein; and

9 (d) The Court, its clerks, Court officials, employees, any special
10 master, referee, expert, technical advisor or Third-Party Consultant appointed by
11 the Court, to the jury in this Action, and any interpreters interpreting on behalf of
12 any party or deponent;

13 (e) Court reporters retained to transcribe depositions and/or
14 retained to record proceedings before the Court; and.

15 (f) Any mediator or settlement officer, and their supporting
16 personnel, mutually agreed upon by those parties engaged in settlement discussions
17 provided that he or she sign a certification that he or she has read this Stipulated
18 Protective Order, will abide by its provisions, and will submit to the jurisdiction of
19 this Court regarding the enforcement of this Stipulated Protective Order's
20 provisions.

21 7.4 If any party wishes to disclose information or materials designated
22 under this Stipulated Protective Order as "CONFIDENTIAL," or "HIGHLY
23 CONFIDENTIAL – ATTORNEYS' EYES ONLY" to any Expert and/or
24 Consultant, it must first identify that individual to the Counsel for the Designating
25 Party and submit a Certification pursuant to Section 7.8.

26 7.5 Legal Effect of Designation. The designation of any information or
27 materials as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS'
28 EYES ONLY" is intended solely to facilitate the conduct of this litigation. Neither

1 such designation nor treatment in conformity with such designation shall be
2 construed in any way as an admission or agreement by any party that the
3 Designated Materials constitute or contain any trade secret or confidential
4 information. Except as provided in this Stipulated Protective Order, no party to
5 this Action shall be obligated to challenge the propriety of any designation, and a
6 failure to do so shall not preclude a subsequent attack on the propriety of such
7 designation.

8 7.6 Nothing herein in any way restricts the ability of the receiving party to
9 use “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” material produced to it in examining or cross-examining any employee or
11 consultant of the Designating Party.¹

12 7.7 The parties agree that Counsel for Defendant One Step Up, Ltd. may
13 be provided by any other defendant a summary of that other defendant’s full
14 identities, revenues, and gross profits numbers. In turn, such information in
15 summary format may be provided to Plaintiff and Defendant One Step Up, Ltd.
16 notwithstanding any party’s designation of documents showing such information as
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Plaintiff and
18 Defendant One Step Up, Ltd. may not disclose the information from such
19 Designated Materials to any party other than the Designating Party.

20 7.8 Certificates Concerning Designated Materials. Each Expert and/or
21 Consultant, to whom any Designated Materials will be disclosed shall, prior to
22 disclosure of such material, execute the Acknowledgement and Agreement to be
23 Bound (“Acknowledgement”) in the form attached hereto as “Exhibit A.” Counsel
24 who makes any disclosure of Designated Materials shall retain each executed
25 Acknowledgement and shall circulate copies to all Counsel for the opposing party
26

27 ¹Parties and representatives of parties not entitled to receive the
28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
ONLY” material must leave the room for said portion of the deposition.

1 concurrently with the identification of the Expert and/or Consultant to the attorneys
2 for the Designating Party.

3 7.9 Use of Designated Materials by Designating Party. Nothing in this
4 Stipulated Protective Order shall limit a Designating Party's use of its own
5 information or materials, or prevent a Designating Party from disclosing its own
6 information or materials to any person. Such disclosure shall not affect any
7 designations made pursuant to the terms of this Stipulated Protective Order, so long
8 as the disclosure is made in a manner that is reasonably calculated to maintain the
9 confidentiality of the information.

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
11 IN OTHER LITIGATION

12 If a Party is served with a subpoena or a court order issued in other litigation
13 that compels disclosure of any information or items designated in this Action as
14 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
15 ONLY" that Party must:

16 (a) promptly notify in writing the Designating Party. Such
17 notification shall include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or
19 order to issue in the other litigation that some or all of the material covered by the
20 subpoena or order is subject to this Protective Order. Such notification shall
21 include a copy of this Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be
23 pursued by the Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served
25 with the subpoena or court order shall not produce any information designated in
26 this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
27 ATTORNEYS' EYES ONLY" before a determination by the court from which the
28 subpoena or order issued, unless the Party has obtained the Designating Party's

1 permission. The Designating Party shall bear the burden and expense of seeking
2 protection in that court of its confidential material and nothing in these provisions
3 should be construed as authorizing or encouraging a Receiving Party in this Action
4 to disobey a lawful directive from another court.

5 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
6 PRODUCED IN THIS LITIGATION

7 (a) The terms of this Order are applicable to information produced
8 by a Non-Party in this Action and designated as "CONFIDENTIAL" or "HIGHLY
9 CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced
10 by Non-Parties in connection with this litigation is protected by the remedies and
11 relief provided by this Order. Nothing in these provisions should be construed as
12 prohibiting a Non-Party from seeking additional protections.

13 (b) In the event that a Party is required, by a valid discovery
14 request, to produce a Non-Party's confidential information in its possession, and
15 the Party is subject to an agreement with the Non-Party not to produce the Non-
16 Party's confidential information, then the Party shall:

17 (1) promptly notify in writing the Requesting Party and the
18 Non-Party that some or all of the information requested is subject to a
19 confidentiality agreement with a Non-Party;

20 (2) promptly provide the Non-Party with a copy of the
21 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
22 reasonably specific description of the information requested; and

23 (3) make the information requested available for inspection by
24 the Non-Party, if requested.

25 (c) If the Non-Party fails to seek a protective order from this court
26 within 14 days of receiving the notice and accompanying information, the
27 Receiving Party may produce the Non-Party's confidential information responsive
28 to the discovery request. If the Non-Party timely seeks a protective order, the

1 Receiving Party shall not produce any information in its possession or control that
2 is subject to the confidentiality agreement with the Non-Party before a
3 determination by the court. Absent a court order to the contrary, the Non-Party
4 shall bear the burden and expense of seeking protection in this court of its
5 Protected Material.

6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has
8 disclosed Protected Material to any person or in any circumstance not authorized
9 under this Stipulated Protective Order, the Receiving Party must immediately (a)
10 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
11 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
12 the person or persons to whom unauthorized disclosures were made of all the terms
13 of this Order, and (d) request such person or persons to execute the
14 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
15 A.

16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
17 PROTECTED MATERIAL

18 Any inadvertent production of documents containing privileged information
19 shall not be deemed to be a waiver of the attorney-client privilege, work product
20 doctrine, or any other applicable privilege or doctrines. All parties specifically
21 reserve the right to demand the return of any privileged documents that it may
22 produce inadvertently during discovery if the producing party determines that such
23 documents contain privileged information. After receiving notice of such
24 inadvertent production by the producing party, the receiving party, within five (5)
25 business days of receiving any such notice, agrees to locate and return to the
26 producing party all such inadvertently produced documents, or certify the
27 destruction thereof.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Local Civil Rule 79-5 and ensure the materials are marked with the legend: "CONFIDENTIAL" or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY INFORMATION SUBJECT TO PROTECTIVE ORDER."

(a) Filing the document under seal shall not bar any party from unrestricted use or dissemination of those portions of the document that do not contain material designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

(b) If a filing party fails to seek to file under seal items which a party in good faith believes to have been designated as or to constitute "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" material, such party may move the Court to file said information under seal within four (4) days of service of the original filing. Notice of such designation shall be given to all parties. Nothing in this provision relieves a party of liability for damages caused by failure to properly seek the filing of Designated Material under seal in accordance with Local Rule 79-5.2.2.

(c) If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the Court.

1 (d) Retrieval of Designated Materials. The party responsible for
2 lodging or filing the Designated Materials shall be responsible for retrieving such
3 Designated Materials from the Court following the final termination of the Action
4 (including after any appeals), to the extent the Court permits such retrieval.

5 12.4 Client Communication. Nothing in this Stipulated Protective Order
6 shall prevent or otherwise restrict Counsel from rendering advice to their clients
7 and, in the course of rendering such advice, relying upon the examination of
8 Designated Material. In rendering such advice and otherwise communicating with
9 the client, however, Counsel shall not disclose any Designated Material, except as
10 otherwise permitted by this Stipulated Protective Order.

11 ~~12.5 No Contract. This Stipulated Protective Order shall not be~~
12 ~~construed to create a contract between the parties or between the parties and~~
13 ~~their respective counsel.~~

14 ~~12.6 Court's Retention of Jurisdiction. The Court retains jurisdiction~~
15 ~~after final termination of the Action prior to trial, to enforce this Stipulation.~~

16 12.7 This Stipulated Protective Order shall not diminish any existing
17 obligation or right with respect to Designated Material, nor shall it prevent a
18 disclosure to which the Designating Party consented in writing before the
19 disclosure takes place.

20 12.8 Unless the parties stipulate otherwise, evidence of the existence or
21 nonexistence of a designation under this Stipulated Protective Order shall not be
22 admissible for any purpose during any proceeding on the merits of this Action.

23 12.9 By stipulating to the entry of this Stipulated Protective Order no Party
24 waives any right it otherwise would have to object to disclosing or producing any
25 information or item on any ground not addressed in this Stipulated Protective
26 Order. Similarly, no Party waives any right to object on any ground to use in
27 evidence any of the material covered by this Stipulated Protective Order.
28 Moreover, this Stipulated Protective Order shall not preclude or limit any Party's

1 right to seek further and additional protection against or limitation upon production
2 of documents produced in response to discovery. The parties reserve their rights to
3 object to, redact or withhold any information, including confidential, proprietary,
4 or private information, on any other applicable grounds permitted by law, including
5 third-party rights and relevancy.

6 12.10 Nothing in this Stipulated Protective Order shall require disclosure of
7 materials that a Party contends are protected from disclosure by the attorney-client
8 privilege or the attorney work-product doctrine. This provision shall not, however,
9 be construed to preclude any Party from moving the Court for an order directing
10 the disclosure of such materials where it disputes the claim of attorney-client
11 privilege or attorney work-product doctrine.

12 13. FINAL DISPOSITION

13 13.1 Modification. The parties reserve the right to seek modification of
14 this Stipulated Protective Order at any time for good cause. The parties agree to
15 meet and confer prior to seeking to modify this Stipulated Protective Order for any
16 reason. The restrictions imposed by this Stipulated Protective Order may only be
17 modified or terminated by written stipulation of all parties or by order of this
18 Court. Parties entering into this Stipulated Protective Order will not be deemed to
19 have waived any of their rights to seek later amendment to this Stipulated
20 Protective Order.

21 13.2 Survival and Return of Designated Material. After the final
22 disposition of this Action, as defined in paragraph 4, within 60 days of a written
23 request by the Designating Party, each Receiving Party must return all Protected
24 Material to the Producing Party or destroy such material. provided that no party
25 will be required to expunge any system back-up media such as copies of any
26 computer records or files containing Protected Material which have been created
27 pursuant to automatic archiving or back-up procedures on secured central storage
28 servers and which cannot reasonably be expunged, and further provided that any

1 destruction does not destroy or affect the destroying party's computer programs,
2 hardware, software, servers, or the like. As used in this subdivision, "all Protected
3 Material" includes all copies, abstracts, compilations, summaries, and any other
4 format reproducing or capturing any of the Protected Material. Whether the
5 Protected Material is returned or destroyed, the Receiving Party must submit a
6 written certification to the Producing Party (and, if not the same person or entity, to
7 the Designating Party) by the 60 day deadline that (1) identifies (by category,
8 where appropriate) all the Protected Material that was returned or destroyed and (2)
9 affirms that the Receiving Party has not retained any copies, abstracts,
10 compilations, summaries or any other format reproducing or capturing any of the
11 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
12 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
13 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
14 reports, attorney work product, and consultant and expert work product, even if
15 such materials contain Protected Material. Any such archival copies that contain or
16 constitute Protected Material remain subject to this Protective Order as set forth in
17 Section 4 (DURATION).

18 14. VIOLATION

19 Any violation of this Order may be punished by appropriate measures
20 including, without limitation, contempt proceedings and/or monetary sanctions.

21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

22
23 DATED: February 1, 2018

24 

25 _____
26 GAIL J. STANDISH
27 UNITED STATES MAGISTRATE JUDGE
28

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CITY PRINTS, LLC
Plaintiff,

v.

LOT LESS NYC, INC.,
Defendant.

Case No. 2:17-cv-02788-PSG-GJS

STIPULATED PROTECTIVE
ORDER

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [date] in the case of City Prints, LLC v. Lot Less NYC, Inc., 2:17-cv-02788-
PSG-GJS. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of

//

//

1 this action.

2 Date: _____

3 City and State where sworn and signed: _____

4

5 Printed name: _____

6

7 Signature: _____

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28